


FEB 28 2011

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

MARCUS WADE CUNNINGHAM,

Plaintiff,

v.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

Civil Action No. 7:10cv00277

**FINAL ORDER**

By: Samuel G. Wilson  
United States District Judge

The court referred this case to the Honorable Pamela Meade Sargent for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). The magistrate judge has filed a report recommending that an order be entered denying the summary judgment motions of both parties, vacating the Commissioner's decision, and remanding the case to the Commissioner for further consideration. Essentially, the magistrate judge concluded that the Administrative Law Judge found that the claimant, Marcus Wade Cunningham, could perform certain past relevant work despite the fact that there was no indication in the record that Cunningham actually previously performed that work. The court notes that it adopts the magistrate judge's recommendation on this ground. The court also notes, however, that its order of remand should not be construed to require the Commissioner to consider the claimant's failure to conform his conduct to the law as a factor in determining whether claimant is disabled. If claimant cannot control the sexually assaultive behavior identified in this record, he should be civilly committed. But the danger the claimant poses to women and children because he will not conform to societal norms and legal requirements is not a factor to be considered in determining whether claimant is disabled.

It is accordingly, **ORDERED** and **ADJUDGED** that the motions for summary judgment by both parties are **DENIED**, the final decision of the Commissioner denying benefits is **VACATED**, the case is **REMANDED** to the Commissioner for further consideration in accordance with the report and recommendation as clarified by this order of remand, and the case is stricken from the docket of the court.

Entered this 28th day of February, 2011

A handwritten signature in black ink, appearing to be 'S. L. M.', written over a horizontal line.

UNITED STATES DISTRICT COURT JUDGE